

Homeowner Association Study Committee

2000 Final Report

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HOMEOWNER ASSOCIATION STUDY COMMITTEE

2000 FINAL REPORT

Enabling Legislation

None; Created by the President of the Senate and the Speaker of the House of Representatives

Purpose

To (1) review the effectiveness of current homeowner association laws in ensuring the rights of homeowners are protected; (2) study the different types and policies of homeowner associations; (3) examine the role of management companies hired by homeowner associations; (4) discuss potential remedies for disputes involving homeowners and homeowner associations; and (5) submit a report of its findings and recommendations.

Membership

House Three members of the House of Representatives, not more than two from the same political party, appointed by the Speaker of the House of Representatives:
Foster, Jarrett (Co-Chair), Marsh

Senate Three members of the Senate, not more than two from the same political party, appointed by the President of the Senate:
Freestone (Co-Chair), Richardson, Smith

Other One member who is a homeowner within a homeowners association, appointed by the Speaker of the House of Representatives:
Mr. Jay DiBenardo

One member representing a homeowners association appointed by the President of the Senate:

Mr. Blaine Donaldson, President, Sun City Home Owners Association

One member jointly appointed by the President of the Senate and the Speaker of the House of Representatives:

Mr. Curtis Ekmark, Legislative Action Committee, Community Associations Institute

One member who is a homeowner within a homeowner association, appointed by the President of the Senate:

Ms. Pat Haruff

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One member representing a developer of master planned communities that contain homeowners associations, appointed by the Speaker of the House of Representatives:

Mr. Scott Higginson, Vice President of Government Affairs, Del Webb Corporation

In addition, the Homeowner Association Study Committee would like to thank Dr. Robert Pogrund for his outstanding service. Unfortunately, Dr. Pogrund was unable to complete his service to the Committee.

Committee Meetings and Subjects

The HOA Study Committee met on five dates: August 14th at the Arizona Senate, September 7th at the Scottsdale City Hall Complex, September 28th at the Bell Recreation Center in Sun City and December 14th at the House of Representatives. Additional meetings were scheduled; however, due to various conflicts, three meetings were cancelled: the October 19th meeting at the Arizona House of Representatives was cancelled to allow the HOA Subcommittees sufficient time to meet and the November 9th meeting at the Gilbert Library and the November 30 meeting in Oro Valley were cancelled due to the Seventh Special Session of the 44th Legislature relating to alternative fuels.

Meeting minutes are available from the Secretary of the Senate and the Chief Clerk of the House of Representatives.

The Committee would like to thank the City of Scottsdale, the Bell Recreation Center at Sun City, the Town of Gilbert and the Town of Oro Valley for their valuable cooperation and support.

Subcommittee Appointments and Charges

On September 14, 2000, Senator Tom Freestone, co-chair of HOA Study Committee, appointed two subcommittees to take a more detailed and comprehensive look at the complex issues facing the committee. In addition, Senator Freestone provided recommendations of the public raised during HOA Committee meetings for the subcommittees to consider. Finally, Senator Freestone asked the subcommittees to report any recommendations for action or future legislation to the full committee. The two subcommittee's membership and initial list of issues for consideration follow:

HOA Study Committee Subcommittee on Statutory Structure

Senator Tom Smith, Chair
Curtis Ekmark
Blaine Donaldson

Initial Issues for Consideration

1. A review of existing HOA statutes
2. A consideration of the need of HOA's to have ability to place liens on property
3. Consideration of additional statutes that:
 - Bar loss of a home through HOA fines and liens
 - Restrict political subdivisions from requiring HOA's
 - Bar validity of restrictions that require 75 percent or more of HOA votes to change bylaws
 - Require Attorney General to enforce open meeting laws
 - Prohibit retroactive amendments to bylaws and declaration
 - Require amendments (and CC&R's and bylaws) to be filed with a public entity
 - Prohibit deed restrictions from being established without amendment process or 66 percent of votes
 - Prohibit non-homeowners/non-residents from serving on HOA boards or committees or serving as HOA officers
 - Limit the ability of developers to be in control of HOA to five years following completion of last home or structure
4. Any other issue deemed appropriate by the subcommittee chairperson

HOA Study Committee Subcommittee on Enforcement of HOA Laws

Representative Kathi Foster, Chair
Scott Higginson
Jay DiBenardo

Initial Issues for Consideration

1. Consideration of the creation of an HOA enforcement entity. Options suggested in past meetings include:
 - An ombudsman that can adjudicate decisions
 - A regulatory board
 - Non-judicial enforcement
 - A mediator with ability to investigate, sanction, reverse fines, remove liens, remove HOA officers
2. Consideration of the appropriate powers of an enforcement entity in overseeing HOA's and HOA residents
3. Any other issue deemed appropriate by the subcommittee chairperson

Subcommittee Recommendations

See Attached

Final Committee Action

The HOA Study Committee voted to hold the report of the Enforcement Subcommittee and to accept the report of the Statutory Structure Subcommittee, with some changes, as listed below:

Open Meeting Laws

- Remove ability of HOA bylaws to provide meeting notice requirements other than those in statute.
- Mandate that all members of an HOA can speak at an HOA meeting. Allow Boards to require that groups of like-minded homeowners designate one spokesperson. Allow time limits on speaking to be instituted. Allow restrictions during meetings of the HOA Board if they are clearly set forth in the CCR's and bylaws.
- Apply all elements of state open meeting laws to HOA's.

Voting and Elections

- Require notification of association members by public posting and either newspaper or newsletter of their right to seek election to the HOA board.
- Require each proxy for HOA board elections to be signed and that all votes, including proxies, be counted in public or by the county voting system and include lot number.
- Stipulate that presence at a meeting supercedes written ballots or proxies.
- Allow amendment to CCR's at any time with 2/3rd majority without having to seek permission of the declarant or any financial institution. Allow amendment vote to occur with mail in ballot or proxy – both must be signed.
- Require election results and ballots to be held for a minimum of 30 days following the election.

Fines, Fees and Liens

- Allows the court to grant attorney and court fees to the winner in any HOA dispute that is resolved by a court.
- Prohibit a HOA from placing a lien on property without a judicial determination that the lien and components thereof are valid and proper. Does not apply to liens arising from non-payment of assessments.
- Specify that treble damages are allowed when an HOA does not remove a lien that has been resolved within a reasonable time.
- Require due process for fines – including a hearing by an independent board (not HOA Board) to provide an unbiased appeal process.
- Require HOA board members and members to follow internal appeals process prior to going to court on any issue.
- Require a 20% cap on increases of assessments in planned community and condominium statutes.
- Prohibit an HOA from stopping services such as water and utilities.

Document Disclosure

- Require that HOA's provide homeowners with the HOA's monthly financial reports and meeting notices/agendas for no fee. Number and frequency of report requests may be limited.
- Allow homeowners to view the HOA's annual budget statement and past HOA meeting minutes upon request with limits. Require copies to be provided for cost of production.
- Require prospective purchasers to be notified that they are entering an HOA. Allow prospective purchasers to view minutes of past meetings or attend future HOA board meetings.
- Allow prospective purchasers to view an HOA's current financial statement and operating budget prior to purchase of property within an HOA.
- Require that seller provide prospective purchasers with CCR's prior to offer of purchase. Require that prospective purchasers acknowledge that they have read and understand CCR's prior to sale.
- Apply financial disclosure requirements to new home sales.
- Require pro-rata payment of shared upkeep or replacement costs that is based on specific benefit to individual unit of property.
- Require disclosure of the different or varying maintenance and upkeep requirements of communal or shared property or responsibilities within a HOA when applicable. Require disclosure of assumed financial responsibility for communal property with differing maintenance and replacement costs.

Developer Control

- Stipulate that management and employment contracts entered into by the developer may be terminated without penalty by the association following transition from developer to owner control.
- Require amendments to bylaws and CCR's in declarant (developer) controlled HOA's to follow an amendment process and notification all HOA members.
- Require developers to convey and financially unencumber common areas upon relinquishing control.
- Require developers to fully fund HOA reserves upon relinquishing control as directed by a reserve study.
- Apply all statutory requirements to HOA's that are under declarant (developer) control.

HOMEOWNER ASSOCIATION ENFORCEMENT SUBCOMMITTEE

Representative Foster

Jay DiBenardo

Scott Higginson

Committee Recommendations

A. Enforcement of Open Meeting Laws.

1. Currently there are no penalties associated with violating association open meeting laws. It would be beneficial to add some sort of penalty.
2. Change statute to require developer run associations to comply with open meeting and open record laws.
3. In statute require all associations to hold at least one annual meeting.

B. Annual Financial Reports

1. In statute require associations to produce an annual report to be made available at the annual meeting and an executive summary to be included with the association's assessment billing statement following the annual meeting.

C. Election Procedures

1. An association's board should be an elected board of actual residents; not a developer appointed board when a developer relinquishes control of a planned community.
2. Develop a standard process for removing board members (recall procedures).

D. Proxy Voting

1. Statute needs to provide a mechanism for overriding an association's bylaws regarding proxy voting. Members should always have a democratic method to change the make-up of the association's board.

E. Statutes pertaining to association

1. This section of statute does not provide for a cap on increasing association fees. However, most association CC&Rs address the CAP, but for those that do not, this section of statute should be amended to reflect the cap language in the Planned Community Association statute.
2. Both the Condo and Planned Community association statutes need a provision detailing the process for amending an association's CC&R.
3. Examine use restrictions for all types of associations.
4. Add language that will prohibit an association board from shutting off a homeowner's utilities.

F. Enforcement

1. Private Property Rights Ombudsman
 - a. Hotline
 - b. Education Clearinghouse
 - c. Funding. *Look into the possibility of a 90/10 board.*

G. Relinquishment of developer run associations

1. Developers control some developer run associations until 100% of the lots are sold. It would be beneficial to put into statute a requirement that once 75% of the lots are sold in a developer run association that control of the association is turned over to the board.

2. Once the board is turned over to the residents (at 75%), a one lot – one vote rule should be implemented.
3. End the Class A and Class B voting system.
4. Some developers construct temporary corporations. These corporations become defunct once the developer moves on, which limits their liability for any type of defect litigation.
5. Ensure developer run associations fund 100% of an association's reserve.
6. Prohibit the developer from offering unreasonably low assessment rates as a marketing tool. This practice perpetuates under funding association treasuries.

Homeowner Association Study Committee
Statutory Structure Subcommittee
Tom Smith, Chair

Final Subcommittee Recommendations

Open Meeting Laws

- Remove ability of HOA bylaws to provide meeting notice requirements other than those in statute.
- Mandate that all members of an HOA can speak at an HOA meeting. Allow Boards to require that groups of like-minded homeowners designate one spokesperson. Allow time limits on speaking to be instituted. Allow restrictions during meetings of the HOA Board.

Voting and Elections

- Require notification of association members by public posting and either newspaper or newsletter of their right to seek election to the HOA board.
- Require each proxy for HOA board elections to be signed and that all votes, including proxies, be counted in public.
- Stipulate that presence at a meeting supercedes written ballots or proxies.
- Require public meetings and a public vote to remove HOA board members. Require 2/3rd vote of at least a quorum of 25% of the HOA membership or 100 members whichever is less.
- Allow amendment to CCR's at any time with 2/3rd majority without having to seek permission of the declarant or any financial institution. Allow amendment vote to occur with mail in ballot or proxy – both must be signed.
- Require election results and ballots to be held for a minimum of 30 days following the election.

Fines, Fees and Liens

- Grant attorney and court fees to the winner in any HOA dispute that is resolved by a court.
- Prohibit an HOA from placing a lien on property without a judicial determination that the lien and components thereof are valid and proper.
- Allow treble damages when an HOA does not remove a lien that has been resolved within a reasonable time.
- Require due process for fines – including a hearing by an independent board (not HOA Board) to provide an unbiased appeal process. Exempt independent hearing board from open meeting laws.
- Require HOA board members and members to follow internal appeals process prior to going to court on any issue.
- Require a 20% cap on increases of assessments in planned community and condominium statutes.
- Prohibit an HOA from stopping services such as water and utilities.

Document Disclosure

- Require that HOA's provide homeowners with the HOA's monthly financial reports and meeting notices/agendas for no fee.
- Allow homeowners to view the HOA's annual budget statement and past HOA meeting minutes upon request.
- Require prospective purchasers to be notified that they are entering an HOA. Allow prospective purchasers to view minutes of past meetings or attend future HOA board meetings.
- Allow prospective purchasers to view an HOA's current financial statement and operating budget prior to purchase of property within an HOA.
- Require that seller provide prospective purchasers with CCR's prior to sale. Require that prospective purchasers acknowledge that they have read and understand CCR's prior to sale.
- Apply financial disclosure requirements to new home sales.

Developer Control

- Stipulate that management and employment contracts entered into by the developer may be terminated without penalty by the association.
- Require amendments to bylaws and CCR's in declarant (developer) controlled HOA's to follow an amendment process and to notify all HOA members.
- Require developers to relinquish control of an HOA either five years after sale of the first unit or when 75% of the development has been sold, whichever is first.
- Require developers to convey common areas upon relinquishing control.
- Require developers to fully fund HOA reserves upon relinquishing control.
- Apply all statutory requirements to HOA's that are under declarant (developer) control.